

EXHIBIT B

United States District Court
Central District of California

MARY LOU VEGA, individually and on
behalf of other members of the public
similarly situated,

Plaintiff,

v.

OCWEN FINANCIAL CORPORATION;
OCWEN LOAN SERVICING, LLC,
Defendants.

Case № 2:14-cv-04408-ODW(PLAx)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO DISMISS [29]**

I. INTRODUCTION

Plaintiff Mary Lou Vega brings this class action against Defendants Ocwen Financial Corporation ("OFC") and Ocwen Loan Servicing, LLC ("OLC"). Vega's allegations question the propriety of property-inspection fees levied against her and the purported class made up of borrowers in default on their home loans. Before the Court is Defendants' Motion to Dismiss. (ECF No. 29.) In the kitchen-sink Motion, Defendants seek dismissal of all six of Vega's claims on several grounds. For the reasons discussed below, the Court **GRANTS IN PART** and **DENIES IN PART** Defendants' Motion to Dismiss.¹ (ECF No. 29.)

¹ After carefully considering the papers filed in support of and in opposition to the Motion, the Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

II. FACTUAL BACKGROUND

Defendants are residential mortgage servicers that, according to Vega, focus their business on non-prime, credit-impaired borrowers. (Compl. ¶ 28.) In the Complaint, Vega challenges regular property-inspection fees levied by Defendants against Vega and a purported class defined as “[a]ll residents of the United States of America who had a loan serviced by [Defendants], and whose accounts were assessed fees for property inspections at any time, continuing through the date of final disposition of this action.” (*Id.* ¶ 81.) Vega also defines a subclass made up of California residents. (*Id.*)

At the time a home loan is issued, borrowers are informed in the promissory note and security instrument (a mortgage or deed of trust) that a loan servicer will pay for “whatever is reasonable or appropriate” to protect the note holder’s interest in the property. (*Id.* ¶¶ 52–53.) The costs of these “default-related services”—including property inspections—are added to the borrower’s debt. (*Id.* ¶¶ 54–55.) But Vega alleges that property-inspection fees are regularly charged to borrowers in default, regardless of whether a property inspection is reasonable or necessary. (*Id.* ¶¶ 58–61.) In her case, Vega alleges that from November 2012 until October 2013, Defendants assessed fees for a total of 12 property inspections on her property, despite the fact that she maintained regular contact with Defendants and occupied the property throughout that time period. (*Id.* ¶ 71.)

According to Vega, Defendants utilize an automated system to order property inspections and assess fees to borrowers in default, and that no meaningful review of the necessity of these property inspections occurs. (*Id.* ¶¶ 60–62.) Vega alleges that this practice does not comport with the Fannie Mae Single Family Servicing Guide, which interprets Fannie Mae’s mortgage notes. (*Id.* ¶¶ 56, 118–19.) The guide states that “charging a delinquent borrower’s account for monthly property inspections generally would not be a permissible practice.” (*Id.*) But Vega alleges that Defendants’ automated system orders property inspections based solely on a

1 borrower's delinquency. (*Id.* ¶¶ 2, 49, 58–59, 61.) The result of these
 2 “indiscriminate” property inspections is that borrowers already in default sink deeper
 3 into debt as the fees stack up. (*Id.* ¶¶ 64–67.)

4 On June 6, 2014, Vega filed the class-action Complaint against Defendants,
 5 bringing a total of six claims for (1) violations of California's Unfair Competition
 6 Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200 *et seq.*; (2) violations of the
 7 Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1962(c);
 8 (3) RICO conspiracy, 18 U.S.C. § 1962(d); (4) violations of the Rosenthal Fair Debt
 9 Collections Practices Act (“RFDCPA”), Cal. Civ. Code §§ 1788 *et seq.*; (5) unjust
 10 enrichment; and (6) fraud. (ECF No. 1.) Defendants filed the instant Motion to
 11 Dismiss on September 29, 2014. (ECF No. 29.) A timely Opposition and Reply were
 12 filed. (ECF Nos. 38, 42.) The Motion is now before the Court for decision.

13 III. LEGAL STANDARD

14 A. Rule 12(b)(6)

15 A court may dismiss a complaint under Rule 12(b)(6) for lack of a cognizable
 16 legal theory or insufficient facts pleaded to support an otherwise cognizable legal
 17 theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). To
 18 survive a dismissal motion, a complaint need only satisfy the minimal notice pleading
 19 requirements of Rule 8(a)(2)—a short and plain statement of the claim. *Porter v.*
 20 *Jones*, 319 F.3d 483, 494 (9th Cir. 2003). The factual “allegations must be enough to
 21 raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550
 22 U.S. 544, 555 (2007). That is, the complaint must “contain sufficient factual matter,
 23 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v.*
 24 *Iqbal*, 556 U.S. 662, 678 (2009).

25 The determination whether a complaint satisfies the plausibility standard is a
 26 “context-specific task that requires the reviewing court to draw on its judicial
 27 experience and common sense.” *Id.* at 679. A court is generally limited to the
 28 pleadings and must construe all “factual allegations set forth in the complaint . . . as

1 true and . . . in the light most favorable” to the plaintiff. *Lee v. City of L.A.*, 250 F.3d
2 668, 688 (9th Cir. 2001). But a court need not blindly accept conclusory allegations,
3 unwarranted deductions of fact, and unreasonable inferences. *Sprewell v. Golden*
4 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

5 **B. Fraud**

6 Fraud pleadings are subject to an elevated standard, requiring a party to “state
7 with particularity the circumstances constituting fraud or mistake.” Fed. R. Civ. P.
8 9(b). “Particularity” means that fraud allegations must be accompanied by “the who,
9 what, when, where, and how” of the misconduct charged. *Vess v. Ciba-Geigy Corp.*
10 *USA*, 317 F.3d 1097, 1103–06 (9th Cir. 2003). Allegations under Rule 9(b) must be
11 stated with “specificity including an account of the time, place, and specific content of
12 the false representations as well as the identities of the parties to the
13 misrepresentations.” *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007).
14 Accordingly, when suing more than one defendant, a plaintiff cannot “merely lump
15 multiple defendants together” but rather must differentiate the allegations and “inform
16 each defendant separately of the allegations surrounding his alleged participation in
17 the fraud.” *Id.* at 764–65.

18 **IV. DISCUSSION**

19 Defendants move to dismiss all of Vega’s claims on several grounds. The
20 Court first addresses Defendants’ arguments applicable to all of the claims and then
21 turns to the sufficiency of the allegations with respect to each of Vega’s claims.

22 **A. Arguments Applicable to All Claims**

23 Defendants characterize Vega’s allegations as being premised on a theory of
24 nondisclosure. According to Defendants, Vega’s claims are based on Defendants’
25 alleged concealment or failure to disclose the frequency of the property inspections.
26 But Defendants argue that all of Vega’s claims fail because the property-inspection
27 fees were disclosed in her monthly statements. Vega was apprised of the frequency of
28 the fees because she was being assessed the fees every month. (Mot. 5–8.) Thus,

1 Defendants argue that Vega's claims should be dismissed because the entire theory of
2 her case—concealment and nondisclosure—fails on the face of the Complaint. (*Id.*)

3 However, the Court finds that Defendants are mischaracterizing Vega's
4 allegations. The fraudulent conduct alleged in the Complaint is that Defendants
5 concealed the true nature of the property-inspection fees. (Compl. ¶¶ 2–3, 10, 48–59,
6 58–59, 61, 98.) Vega is not challenging Defendants' ability to assess property-
7 inspection fees, nor is Vega alleging that Defendants concealed the frequency of the
8 fees. Instead, the thrust of Vega's allegations is that by assessing the fees on a
9 monthly basis, Defendants were misrepresenting the necessity of the fees. The
10 Complaint challenges the manner in which Defendants order and charge homeowners
11 for property inspections—by using an automated system that orders property
12 inspections on a monthly basis regardless of the individual circumstances of the
13 borrower and property at issue. (*Id.* ¶¶ 49, 51–56, 58–59, 61.)

14 The Court finds that Vega's claims are not premised on a theory of
15 nondisclosure about the frequency of the property inspections, but rather on a theory
16 of misrepresentation about the nature and necessity of the fees. Therefore, the Court
17 **DENIES** Defendants' Motion with respect to the nondisclosure argument. *Cf. Huyer*
18 *v. Wells Fargo & Co.*, 295 F.R.D. 332 (S.D. Iowa Oct. 23, 2013) (granting class
19 certification in an action challenging a bank's policy of indiscriminately ordering
20 property inspections for delinquent mortgage loans).

21 **B. UCL Claim**

22 Defendants next challenge Vega's UCL claim for lack of statutory standing and
23 failure to state a claim under the unfair, fraudulent, and unlawful prongs of the UCL.

24 **1. Standing**

25 To have standing to sue under the UCL, a plaintiff must show “a loss or
26 deprivation of money or property sufficient to qualify as injury in fact, i.e., *economic*
27 *injury . . .*” *Kwikset Corp. v. Superior Ct.*, 51 Cal. 4th 310, 321–22 (2011); *see also*
28 Cal. Bus. & Prof. Code § 17204 (requiring injury in fact and lost money or property).

1 Here, Defendants argue that Vega lacks standing under the UCL because she
2 has not alleged an economic injury. Vega does not allege that she has made any
3 payment of the property-inspection fees—or any payment at all—to Defendants since
4 they began servicing her loan in 2012. (Mot. 8:15–26.) On the other hand, Vega
5 argues that she has properly alleged an injury in fact because her economic injury is
6 the assessment of an invalid debt. (Opp’n 5:24–7:21.)

7 Defendants rely on a handful of district court decisions for their position, but
8 the Court finds these cases unpersuasive and easily distinguishable from the case at
9 hand. *See Benner v. Bank of Am., N.A.*, 917 F. Supp. 2d 338, 360 (E.D. Pa. Jan. 7,
10 2013) (finding that unpaid property-inspection fees did not constitute an
11 “ascertainable loss of money or property” for purposes of standing under
12 Pennsylvania law as opposed to California law); *Serna v. Bank of Am., N.A.*,
13 No. 11-cv-10598-CAS(JEMx), 2012 WL 2030705, at *5 (C.D. Cal. June 4, 2012)
14 (finding no UCL standing where plaintiff sought a home loan modification on an
15 undisputed debt before foreclosure proceedings commenced). Instead, the Court finds
16 that Vega has alleged economic injury under the UCL because the property-inspection
17 fees improperly increased the debt securing her property. *See Rubio v. Capital One*
18 *Bank*, 613 F.3d 1195, 1204 (9th Cir. 2010) (holding that closing a credit card account
19 and losing the credit extended by the bank and/or keeping an account open and
20 accepting a higher APR would result in economic injury sufficient for UCL standing).
21 Accordingly, Vega has standing to sue under the UCL.

22 **2. Unfair Prong**

23 The UCL prohibits “any unlawful, unfair, or fraudulent business act or
24 practice.” Cal. Bus. & Prof. Code. § 17200. Defendants challenge Vega’s UCL claim
25 under all three prongs of the statute.

26 Defendants first contend that Vega’s UCL claim fails because the assessment of
27 monthly property-inspection fees on a borrower in default is expressly authorized in
28 the deed of trust and the California Court of Appeal has already ruled that these fees

1 are not “unfair” under the UCL. (Mot. 9:16–10:27); *Walker v. Countrywide Home*
2 *Loans, Inc.*, 98 Cal. App. 4th 1158, 1175–78 (2002) (granting summary judgment in
3 favor of a loan servicer because property inspections were not unfair under the UCL).

4 Defendants’ reliance on *Walker* is misplaced. As Vega points out in her
5 Opposition, the issue in *Walker* was broader than the issue presented in Vega’s
6 Complaint. (Opp’n 7:24–28.) The California Court of Appeal in *Walker* considered
7 whether it is ever appropriate for a loan servicer to charge a delinquent borrower a
8 property-inspection fee. 98 Cal. App. 4th at 1175–78. The answer was yes. *Id.*
9 However, in this case, Vega is challenging the manner in which Defendants charge
10 delinquent borrowers these fees—by automatically ordering property inspections
11 every month on every property in default without consideration of the necessity. *See,*
12 *e.g., Young v. Wells Fargo & Co.*, 671 F. Supp. 2d 1006, 1024–25 (S.D. Iowa
13 Oct. 27, 2009) (denying a motion to dismiss the plaintiff’s California UCL claim by
14 finding that *Walker* only addressed “the imposition of property inspection fees in
15 general” and not the manner in which the fees were charged); *Cirino v. Bank of Am.,*
16 *N.A.*, No. 13-cv-8829-PSG(MRWx), ECF No. 41 at 11 (C.D. Cal. Oct. 1, 2014)
17 (finding that *Walker* does not address whether automated property-inspection
18 practices are fraudulent and unfair).

19 Moreover, *Walker* was decided at summary judgment, and the reasonableness
20 of the property-inspection fees is a factual question that cannot be decided at the
21 motion-to-dismiss stage. *Stitt v. Citibank, N.A.*, 942 F. Supp. 2d 944, 952 (N.D. Cal.
22 Apr. 25, 2013) (finding that the “necessity” of property-inspection fees is a factual
23 question that would be premature to address in a motion to dismiss); *Young*, 671 F.
24 Supp. 2d at 1024 (stating that the reasonableness of property-inspection fees cannot be
25 addressed without an evidentiary record).

26 The Court finds that Vega has adequately stated a claim under the unfair prong
27 of the UCL.

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1 **3. Fraudulent Prong**

2 Defendants also argue that Vega's UCL claim fails under the fraudulent prong
3 for two reasons. First, Defendants once again argue that to the extent that Vega
4 challenges the frequency in which the fees were assessed, Defendants made no
5 misrepresentations since the fees were included in her monthly statements.
6 (Mot. 11:11–15; Compl. ¶ 103.) Second, to the extent that Vega's UCL claim is
7 premised on any other theory of misrepresentation, Defendants contend that the
8 Complaint fails to meet the particularity requirements of Rule 9(b). (Mot. 11:16–28.)

9 The Court finds Defendants arguments unpersuasive. As discussed above,
10 Vega is not alleging that Defendants failed to disclose the frequency of the property-
11 inspection fees. Rather, Vega alleges that Defendants affirmatively misled borrowers
12 by assessing fees for unnecessary property inspections. (Compl. ¶¶ 76, 98, 102–04.)

13 Furthermore, the Court is satisfied that the particularity requirements of Rule
14 9(b) have been met. In the Complaint, Vega alleges exactly why Defendants' conduct
15 is false and misleading—using their status as large financial institutions to disguise
16 the “true character, quality, and nature of the fees.” (*Id.*) The Court finds this case
17 distinguishable from *Kirkeby v. JPMorgan Chase Bank, N.A.*, No. 13cv377 WQH-
18 MDD, 2014 WL 4364836, at *4–5 (S.D. Cal. Sept. 3, 2014), where the court
19 dismissed a similar UCL claim under the fraudulent prong based on Rule 9(b)'s
20 specificity requirements. In *Kirkeby*, the allegations involved “default-related
21 services” in general and there were no allegations regarding the dates or frequency of
22 Defendants' allegedly misleading statements. 2014 WL 4364836, at *4–5. But here,
23 Vega has alleged that property-inspection fees are assessed against delinquent
24 borrowers on a monthly basis based on an automated system used by Defendants.
25 Defendants misled Vega and other borrowers by assessing the fees monthly without
26 disclosing the manner in which Defendants order the inspections.

27 The Court finds that Vega has adequately stated a claim under the fraudulent
28 prong of the UCL.

1 **4. Unlawful Prong**

2 Defendants also move to dismiss Vega's UCL claim under the unlawful prong.
3 According to Defendants, the claim under the unlawful prong is premised on
4 California's fraud statutes, RICO, and the RFDCPA. Defendants contend that these
5 separate claims all fail, so the UCL claim under the unlawful prong fails as well.
6 However, as discussed below, the Court finds that Vega has adequately alleged claims
7 for fraud and violations of RICO and the RFDCPA, so her UCL claim under the
8 unlawful prong survives the present Motion as well.

9 For the reasons discussed above, the Court **DENIES** Defendants' Motion with
10 respect to Vega's UCL claim.

11 **C. Fraud Claim**

12 Defendants next move to dismiss Vega's fraud claim, mainly arguing that the
13 claim is barred by the economic-loss doctrine because Vega alleges "nothing more
14 than a purported breach of contract." (Mot. 12:10–13.) The economic-loss rule in
15 California prevents parties bound by contract from suing in tort unless they allege a
16 harm that is distinct from the harm arising out of the breached contract. *See Food*
17 *Safety Net Servs. v. Eco Safe Sys. USA, Inc.*, 209 Cal. App. 4th 1118, 1130 (2012) ("A
18 party alleging fraud or deceit in connection with a contract must establish tortious
19 conduct independent of a breach of the contract itself, that is, a violation of 'some
20 independent duty arising from tort law.'" (quoting *Robinson Helicopter Co. v. Dana*
21 *Corp.*, 34 Cal. 4th 979, 990 (2004))). Here, Defendants argue that Vega's deed of
22 trust explicitly permits "reasonable and appropriate" property-inspection fees, and
23 Vega merely alleges that Defendants breached the terms of the deed of trust by
24 ordering "unnecessary" property inspections. (Mot. 13:7–20.)

25 On the other hand, Vega contends that her fraud claim is not barred by the
26 economic-loss doctrine because the alleged misconduct goes much further than
27 Defendants' failure to perform a contractual promise. (Opp'n 10:25–12:6); *see also*
28 *Young*, 671 F. Supp. 2d at 1034–35 (stating that similar allegations of indiscriminately

1 assessing property-inspection fees go beyond mere breach of contract and instead
2 constitute “a systematic course of conduct to defraud mortgage borrowers”).

3 At this stage of the litigation, the Court is satisfied that Vega’s allegations go
4 beyond a mere breach of contract and the economic-loss doctrine does not apply.
5 Vega alleges that Defendants not only assessed unnecessary property-inspection fees
6 against her, but that the fees against her are part of a broader scheme to profit off from
7 all defaulting borrowers whose loans Defendants service. (*See, e.g.,* Compl.
8 ¶¶ 64–67.) Moreover, for the same reasons discussed above with respect to the UCL
9 claim, the Court finds that Vega has met the specificity requirements of Rule 9(b).
10 Thus, the Court **DENIES** Defendants’ Motion as to Vega’s fraud claim.

11 **D. RICO Claims**

12 Defendants also challenge the sufficiency of Vega’s RICO allegations, arguing
13 that Vega lacks standing to sue under RICO and has failed to allege a valid RICO
14 enterprise or the requisite predicate acts. Defendants also contend that Vega’s RICO
15 conspiracy allegations are insufficient.

16 **1. Standing**

17 Defendants argue that Vega lacks standing to sue under RICO for many of the
18 same reasons discussed above in terms of the UCL claim. Since Vega has not alleged
19 any payment of the property-inspection fees, she has not suffered an injury in fact.
20 (Mot. 13:24–14:13.) But the Court once again disagrees, finding that the assessment
21 of an allegedly invalid debt is sufficient to meet the injury-in-fact requirement under
22 RICO as well. *See Rubio*, 613 F.3d at 1204.

23 Defendants also argue that Vega cannot allege that her harm was caused by the
24 alleged RICO violation, citing case law discussing a third party’s direct injury being
25 passed on to the plaintiff. (Mot. 14:4–13); *Munoz v. Zirkle Fruit Co.*, 301 F.3d 1163,
26 1168–69 (9th Cir. 2002). However, the Court fails to see how Vega has merely
27 alleged a “passed-on injury” as opposed to a direct injury. The Court finds that Vega

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1 has adequately alleged that her harm—the invalid debt—was caused by Defendants
2 conduct. The Court finds that Vega has standing under RICO.

3 **2. RICO Enterprise**

4 In the Complaint, Vega alleges an associated-in-fact enterprise, which for the
5 purposes of RICO is “a group of persons associated together for a common purpose of
6 engaging in a course of conduct.” *U.S. v. Turkette*, 452 U.S. 576, 583 (1981). The
7 requirements of an associated-in-fact enterprise are that it (1) has a common purpose,
8 (2) is an ongoing organization, either formal or informal, and (3) associates function
9 as a continuing unit. *Odom v. Microsoft Corp.*, 486 F.3d 541, 552–53 (9th Cir. 2007).
10 Here, Vega alleges that the enterprise is made up of Defendants OFC and OLS as well
11 as non-parties—Altisource Portfolio Solutions S.A. and “property preservation
12 vendors.” (Compl. ¶¶ 3, 109–22.)

13 But Defendants argue the enterprise allegations are insufficient. Defendants
14 contend that Vega’s failure to specifically identify the property-preservation vendors
15 precludes her RICO claim based on their conduct. (Mot. 15:4–18.) Defendants also
16 argue that Vega has lumped OFC and OLS together without specifying their
17 individual roles in the enterprise, nor does she explain Altisource’s role in the
18 enterprise. (Mot. 15:19–16:12.)

19 The Court finds that Vega has sufficiently alleged an associated-in-fact
20 enterprise under RICO. According to the Complaint, OFC, OLS, Altisource, and
21 third-party vendors “associated together for the common purpose of indiscriminately,
22 routinely, and repeatedly, ordering, conducting and assessing borrowers’ accounts for
23 unnecessary property inspections.” (Compl. ¶ 111.) The role of each member of the
24 enterprise is detailed in the Complaint. OFC and OLS control and direct the affairs of
25 the enterprise and use the other members as instrumentalities to carry out the
26 fraudulent scheme. (*Id.* ¶ 113.) Defendants’ executives set the policies and
27 procedures. (*Id.* ¶ 114.) Defendants allegedly funnel work to Altisource—a wholly
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1 owned subsidiary of Defendants until 2009²—and Altisource in turn orders default-
2 related services such as property inspections from a network of third-party vendors.
3 (*Id.* ¶¶ 44–46.) These vendors then conduct property inspections under the direction
4 of Defendants “without consideration for whether they are necessary.” (*Id.* ¶ 114.)

5 There is no requirement that a RICO enterprise have a particular structure.
6 *Odom*, 486 F.3d at 551. Nor does RICO require an enterprise to be “something more
7 than a contract-based relationship.” *Friedman v. 24 Hour Fitness USA, Inc.*, 580 F.
8 Supp. 2d 985, 992–94 (C.D. Cal. Sept. 22, 2008) (“RICO enterprises may include
9 entirely legitimate entities that are exploited by wrongdoers and . . . not every member
10 of an enterprise need be a co-defendant.”) The Court finds that Vega’s allegations of
11 a RICO enterprise are sufficient. *See, e.g., Bias v. Wells Fargo & Co.*, 942 F. Supp.
12 2d 915, 942 (N.D. Cal. Apr. 25, 2013) (finding that plaintiff sufficiently alleged a
13 RICO enterprise consisting of a bank and third-party vendors and brokers who
14 provided default-related services “at the core of the scheme”).

15 3. Predicate Acts

16 Defendants also challenge the sufficiency of Vega’s RICO claims by arguing
17 that Vega has failed to allege the requisite predicate acts. To the extent that
18 Defendants characterize Vega’s allegations as being based on a theory of
19 nondisclosure, the Court has already disagreed. Vega is alleging affirmative
20 misrepresentations on the part of Defendants—that the monthly property inspections
21 were necessary. Defendants also argue that a mere breach of the deed of trust does
22 not constitute a predicate act for the purposes of RICO. (Mot. 17:27–18:11.) But the
23 Court has already found, as discussed above with respect to the fraud claim, that Vega
24 alleges conduct that goes beyond a mere breach of contract. Instead, Vega is
25 challenging Defendants’ overall policy of indiscriminately ordering property inspections
26 and charging borrowers the fees.

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28 ² Vega also alleges that certain individuals still own significant shares of Defendants and Altisource,
and that regulators have raised concerns about self-dealing. (Compl. ¶ 37–38, 44–46.)

1 The Court finds that Vega has alleged the requisite predicate acts to support her
2 RICO claims.

3 **4. RICO Conspiracy**

4 Defendants' arguments regarding the RICO conspiracy claim under 18 U.S.C.
5 § 1962(d) are also unpersuasive. Since the Court finds that a substantive RICO
6 violation has been alleged, Defendants' arguments in this respect fail. Also, while
7 Defendants contend that the conspiracy allegations are merely conclusory, the Court
8 disagrees. Vega alleges that the enterprise "was aware of the nature and scope of the
9 enterprise's unlawful scheme, and they agreed to participate in it." (Compl. ¶ 140.)
10 But Vega also alleges specific facts to support these allegations of knowledge and
11 intent. For example, Vega references the Fannie Mae Single Family Servicing Guide,
12 which states that "charging a delinquent borrower's account for monthly property
13 inspections generally would not be a permissible practice." (*Id.* ¶¶ 56, 118–19.)
14 Accordingly, the Court finds that Defendants' grounds for dismissal of the RICO
15 conspiracy claim fail.

16 For these reasons, the Court also **DENIES** Defendants' Motion with respect to
17 the RICO claims.

18 **E. RFDCPA Claim**

19 Defendants contend that Vega's RFDCPA claim fails for four reasons, some of
20 which the Court has already rejected.

21 First, Defendants argue that Vega's RFDCPA claim must be dismissed because
22 it is premised on the alleged concealment of the frequency of the property-inspection
23 fees. (Mot. 19:23-26.) Since the fees were assessed and listed on monthly statements
24 that are referenced in the Complaint, Vega's alleged theory of nondisclosure
25 necessarily fails. (*Id.*) But the Court has already addressed this theory, finding that
26 Defendants have misconstrued the allegations in the Complaint. Vega is challenging
27 the necessity of the fees and the manner in which property inspections are ordered, not
28 the concealment of the frequency of the fees.

1 Defendants next argue that the RFDCPA claim should be dismissed because it
2 is based on a breach of Fannie Mae's servicing guidelines. (Mot. 19:27–20:8.)
3 According to Defendants, Vega lacks standing because her RFDCPA allegations
4 relate to the enforcement of agreements between Defendants and third-party investors.
5 (*Id.*) But Defendants are once again misconstruing the nature of Vega's claim. Vega
6 references the Fannie Mae Single Family Servicing Guide to support its theory that
7 Defendants' practice of indiscriminately ordering property inspections on properties in
8 default is unreasonable and violates borrowers' deeds of trust. (*See* Opp'n 20:9–21:4.)
9 Vega is not trying to enforce an agreement between third-party investors and
10 Defendants.

11 Defendants also seek dismissal of the RFDCPA claim because the assessment
12 of the property-inspection fees is not "misleading" because the fees were authorized in
13 Vega's deed of trust. (Mot. 20:9–26.) But Vega's RFDCPA claim is not challenging
14 Defendants' right to assess the property-inspection fees. Instead, Vega challenges the
15 manner in which Defendants order property inspections without taking into
16 consideration the necessity of the inspections for each property. (*See* Opp'n 23:22.)
17 The Court's distinction from the *Walker* case above is instructive on this point.

18 Finally, Defendants move to dismiss the RFDCPA claim as being barred by the
19 statute of limitations. (Mot. 20:27–21:3.) The RFDCPA has a one-year statute of
20 limitations. Cal. Civ. Code § 1788.3(f). According to Defendants, since Vega alleges
21 that property-inspection fees were assessed beginning in November 2012 and the
22 Complaint was not filed until June 2014, her RFDCPA claim is time-barred. But, as
23 Vega points out in her Opposition, she alleges in the Complaint that Defendants
24 knowingly and actively concealed, denied, and misled Vega as to the necessity of the
25 property inspections. (Opp'n 23:24–28; Compl. ¶¶ 75–79.) Thus, if established by
26 the evidence at a later stage, the statute of limitations should be tolled until Vega
27 discovered the violation. In addition, even without tolling, Vega's RFDCPA claim is
28 not time-barred because property-inspection fees were assessed through October 2013,

1 which is within the one year limitations period. (*See* Opp'n 23:28–24:5.) At this
2 stage of the litigation, the statute of limitations does not bar Vega's RFDCPA claim.

3 The Court **DENIES** Defendants' Motion with respect to the RFDCPA claim.

4 **F. Unjust Enrichment**

5 Lastly, Defendants move to dismiss Vega's unjust-enrichment claim.
6 Defendants raise a number of grounds for dismissal of this claim, but the Court need
7 address only one. Vega has not alleged any payment to Defendants of the property-
8 inspection fees; thus, Defendants have not been unjustly enriched at Vega's expense.
9 (*See* Mot. 22:7–22:12.) The Court distinguishes this issue from its discussion of
10 standing under the UCL and RICO above. While Vega has alleged an injury in fact
11 under those statutes—the assessment of an invalid debt—she cannot obtain relief
12 under a claim for unjust enrichment because Defendants have not yet received a
13 benefit from their alleged conduct. No payment of the property-inspection fees has
14 been alleged, so there is nothing for Defendants to disgorge. *See McBride v.*
15 *Boughton*, 123 Cal. App. 4th 379, 389 (2004) (stating the elements of a claim for
16 unjust enrichment). Accordingly, the Court **GRANTS** Defendants' Motion to
17 Dismiss with respect to Vega's unjust-enrichment claim. Since Vega has not
18 indicated in her Opposition that payment of at least some of the property-inspection
19 fees was merely an omission from the Complaint, the unjust-enrichment claim is
20 **DISMISSED WITHOUT LEAVE TO AMEND.**

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V. CONCLUSION

For the reasons discussed above, the Court **GRANTS IN PART** and **DENIES IN PART** Defendants' Motion to Dismiss. (ECF No. 29.) The Court denies the Motion as to all claims except the unjust-enrichment claim, which is **DISMISSED WITHOUT LEAVE TO AMEND**. Defendants' shall answer the Complaint within **14 days** of the date of this Order.

IT IS SO ORDERED.

December 1, 2014



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE